

ARIZONA DEPARTMENT OF WATER RESOURCES

500 North Third Street, Phoenix, Arizona 85004

Telephone 602 417-2442

Fax 602 417-2401



JANE DEE HULL
Governor

JOSEPH C. SMITH
Director

November 20, 2002

Jayne Harkins
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Ms. Harkins:

The Arizona Department of Water Resources (Department) submits the following comments regarding the proposed supplement to the 2002 Annual Operating Plan (AOP) for the Colorado River.

The Department believes that the Interim Surplus Guidelines (ISG) prescribe the criteria and method that the Secretary has to use to calculate the water apportionment to each state in the lower Colorado River Basin. The Secretary through the AOP then adopts the final determination of the annual apportionment. The ISG was adopted and in force for the calendar year 2002. The ISG criteria required that a Full Domestic Surplus be declared in 2002. The amount of the surplus is further defined to be "For Direct Delivery Domestic Use by MWD, 1.250 maf reduced by the amount of basic apportionment available to MWD." Under the California Seven Party agreement, the first three priorities for California agricultural agencies is 3.85 maf leaving a minimum basic apportionment for MWD of 550 kaf. We also understand that under a 1989 conservation agreement between MWD and the Imperial Irrigation District, MWD has access to nearly 110 kaf of the 3.85 maf, which increases the basic apportionment to MWD and decreases the water apportioned to California agricultural agencies. In calculating the surplus for California, we believe that the Secretary must include in the basic apportionment to MWD 550 kaf and the amount of water available to it under the 1989 conservation agreement. This amount is subtracted from 1.25 maf. The resulting calculation plus the remaining water available under priorities one, two and three to California agriculture is the limit to the amount of water that can legally be apportioned and delivered to California under the ISG.

In the 2002 proposed supplement to the AOP, the Secretary can only authorize over-deliveries to California if the surplus quantities are allowed by the ISG, or if the quantities are inadvertent overruns. Because the over-deliveries are for agricultural purposes, they clearly cannot be surplus deliveries under the ISG and 2002 AOP determination. We believe that the Secretary does not have the authority to loan extra water to agricultural agencies beyond their legal water entitlements even if there is a promise to payback the excess. Because the proposed over-deliveries are not authorized surplus deliveries, they must be declared to be inadvertent overruns. In our opinion, the proposed over-deliveries should not qualify as inadvertent overruns.

However, we recognize that in the absence of the adopted Inadvertent Overrun Policy, there is no agreed upon definition for inadvertent at this time. Arizona is concerned that no precedent be established for the definition of inadvertent overrun by authorizing the proposed water deliveries in the supplement to the 2002 AOP. The Department has made extensive comments regarding the proposed Inadvertent Overrun Policy insisting water agencies should be given notice about the potential for exceeding contract entitlements and state apportionments so that they may avoid large overruns. Such notice was made in 2002, and all agencies had time to adjust water orders. In the future, we feel that overruns made after proper notice cannot be claimed as inadvertent. For this reason, we request that the statement at the end of the sixth paragraph be changed to read "Nothing in this supplement to the 2002 AOP is applicable to any future Secretarial determination OR WILL SERVE AS A PRECEDENT FOR THE DETERMINATION OF AN INADVERTENT OVERRUN OF WATER ENTITLEMENT."

All water entitlement holders, states and the Secretary must adhere to the water apportionments established pursuant to the ISG. The ISG requires reductions in water deliveries in some circumstances. The determinations made by the Secretary are not flexible and must be adhered to by everyone. We understand the difficulties facing the water users and the Secretary in the first year of implementation of the guidelines. If inadvertent overrun water deliveries are made to the states, we agree that timely payback to the river system be made to avoid even more rigorous reductions that the ISG will require. In spite of our stated concerns, we do not object to the Secretary's proposed supplement to the AOP for 2002, under the conditions that the action sets no future precedents for the calculation of the quantity of the surplus under the ISG, or for the determination of what constitutes an inadvertent overrun.

Sincerely;



Thomas Carr

Manager, Colorado River Section